



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Wayne Lafevre
County Auditor
Clay County
Henrietta, Texas

Dear Sir:

Opinion No. C-1072

Re: Is the 1/2 of 1% commission from the receipts of properties handled by an administrator paid at the time of the sales of property, or payable upon the submission of exhibits and annual reports?

Your request for an opinion upon the above stated question has been received by this office.

Your letter reads in part as follows:

"Is the 1/2 of 1% commission from the receipts of properties handled by an administrator paid at the time of the sales of property, or payable upon the submission of exhibits and annual reports? (Should they be paid to the County Judge who approves annual account and makes audit of same?)"

Article 3850, R. C. S. 1911, reads as follows:

"There shall be allowed the county judge a commission of one-half of one per cent upon the actual cash receipts of each executor, administrator or guardian or upon the approval of the exhibits and final settlement of the account of such executor, administrator or guardian, but no more than one such commission shall be charged on any amount received by any executor, administrator or guardian."

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Article 3850, supra, was brought forward in the Revised Civil Statutes of 1925 in Article 3926, which reads in part as follows:

"The county judge shall also receive the following fees:

"1. A commission of one-half of one per cent upon the actual cash receipts of each executor, administrator or guardian, upon the approval of the exhibits and the final settlement of the account of such executor, administrator or guardian, but no more than one such commission shall be charged on any amount received by any such executor, administrator or guardian."

We quote from the case of Grice vs. Cooley, et al, 179 SW 1098, as follows:

"When are the commissions provided for by Article 3850 (now Art. 3926) payable? It is the contention of appellant that they are not payable until the guardian's final account is approved. Appellees contend that they are payable upon all cash receipts shown by any annual account of the guardian, when such account is approved by the judge to whom it is presented. Omitting formalities, the article provides that the county judge, in addition to other specified fees, shall 'be allowed a commission of one-half of 1 per cent. upon the actual cash receipts of each guardian, upon the approval of the exhibits and the final settlement of the account of such guardian,' provided only one such charge shall be made. Proceeding on the theory that the Legislature, when it enacted that such fees should be paid 'upon the approval of the exhibits and the final settlement of the account' of the guardian, intended that full force and effect should

be given to both provisions, we conclude that such commissions may be payable upon approval of the annual account or upon approval of the final account, depending upon when the guardian received the money upon which the commission is sought to be collected. For illustration, if, upon presentation of an annual account, it discloses that cash has been received by the guardian prior to such presentation and subsequent to any last annual account, such guardian would be entitled to the specified commissions upon the approval of the account so presented. On the other hand, if it appears from the guardian's final account that since his last annual account further cash has been received, he would be entitled to his commission thereon upon the approval of such final account. The reference to the approval of the guardian's exhibits and the approval of his final account we regard as merely fixing the period or time when the county judge may tax his commissions. By Article 4186, R. S. 1911, guardians are required to present an annual account under oath showing, among other things, 'a complete account of receipts and disbursements since the last annual account.' Upon presentation of such annual account, it is by subsequent provisions of the statutes made the duty of the then presiding county judge to conduct a hearing thereon, and, if he is satisfied that the account is correct, it is his duty to approve same. Having made it the duty of the county judge to approve such accounts, and having allowed a fee of one-half of 1 per cent. upon the 'actual cash receipts' shown thereby, it surely follows, it seems to us, that the commissions are payable upon such approval, for the reason that

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they were clearly intended for the benefit of the officer performing the duty, and, having been so intended, it was never contemplated that he should forego his compensation until final settlement of the estate, particularly when final settlement might not come until after the lapse of many years and the possible death of the officer. We do not, as indicated, think the reference to final settlement at all meaningless. It is very probably that in many guardianship proceedings cash would be received by the guardian in the period intervening between his last annual account and the final account. If such cash was received, the county judge who heard and approved such final account would be entitled to the commission thereon, and the sole purpose, in our opinion, for any reference to final settlement, was to secure the officer in the payment of the fees accruing at that time and which could not be done under the provision covering annual accounts.

"We have treated the word 'exhibits', in article 3850, as referring to annual accounts. While it may not be said that the exhibit, either literally or in legal contemplation, means account, it is well known that accounts are often attached to pleadings as exhibits. Such custom, taken in connection with the reference in the same article to cash receipts required to be shown in annual accounts by article 4186, R. S. 1911, and the further fact that the annual accounts required of other fiduciaries are referred to as annual exhibits (articles 3241, 3242, R. S. 1911), are in our opinion sufficient basis for holding that annual accounts were intended."

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Articles 3320 and 3321, R. C. S. read as follows:

"Art. 3320. Executors and administrators shall make annual exhibits under oath, fully showing the condition of the estate; they shall make final settlement of the estates they represent within three years from the grant of letters, unless the time be extended by the court after satisfactory showing made under oath; and, upon failure in either case, shall be removed as provided by law.

"Art. 3321. Any exhibit made by an executor or administrator showing a list of claims allowed and approved or established against the estate he represents, or showing the condition of said estate and an account of all money received and paid out on account of said estate, returned to the court before the filing of the account for final settlement, shall be filed with the clerk, and notice of such filing shall be posted at the courthouse door for ten days from the posting, after which the court shall examine said exhibit, and if correct, render judgment of approval thereon and order it to be recorded."

In view of the foregoing authorities, you are respectfully advised that it is the opinion of this department that the one-half of one per cent commission from the receipts of properties handled by an administrator is payable to the county judge upon the submission of exhibits and the annual report and that such commission is not payable at the time of the sales of the property.

Trusting that the foregoing answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

APPROVED JUL 18, 1939

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[Signature]
FIRST ASSISTANT
ATTORNEY GENERAL

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BY *WR*